



Judges in the Classroom

Ferry Searches During Times of Crisis

Source:

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www.courts.wa.gov/education/.

Objectives:

1. Students will identify legal requirements of searches conducted with and without a warrant.
2. Students will explore the legal standard for conducting random searches of passenger vehicles preparing to board state ferries.

Grade Level:

Grades 9-12

Time:

One class period (approximately 50 minutes)

Materials:

One copy of Handout 1 (Ferry Search Case Study) for each student

Note: This lesson assumes the teacher has already taught students the federal and state constitutional sources of rights for search and seizure, identified the competing interests of privacy and law enforcement, and reviewed the requirements for a search warrant.

Procedures:

1. **Begin the class by introducing yourself** and telling a little bit about what you do. Tell students that today's class will deal with search and seizure, specifically, the times that law enforcement is not required to get a search warrant. You might also describe to students how your particular judicial responsibilities relate to search and seizure: authorizing warrants, ruling on motions to suppress, reviewing on appeal the admission of questioned evidence, etc.
2. **Review briefly that both** the Fourth Amendment and the Washington State

Constitution require that warrants issue "upon probable cause." Ask students what that means.

3. **Draw this line graph on the board to demonstrate probable cause.**

Scale that measures how much information and what kind of information.

0%					50% +	95%	100%
No Inform- ation	Hunch	Sus- picion	Reason- able Grounds	Probable Cause	Preponderance of Evidence	Beyond Reasonable Doubt	Certain- y

4. **Explain each entry on the chart.**

No Information means the officer doesn't know anything about the location of evidence linked to a crime.

Hunch means the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.

Suspicion means the officer knows a minor fact or knows some larger fact from an unknown or unreliable source that suggests evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question, and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street, which says that a particular person is selling drugs.

Reasonable Grounds (also called Reasonable Belief and Reasonable Suspicion) means the officer knows several minor facts, or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a teacher standing outside a girls' lavatory smells cigarette smoke coming from the lavatory. The only two girls in the lavatory then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purses (a violation of a school rule).

Probable Cause means an officer has enough evidence to lead a reasonable person to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug-growing operation is under way inside. However, such an increase, with other suspicious facts including an anonymous phone call claiming that people at a certain place are growing drugs, is enough for probable cause and a search warrant.

Preponderance of the Evidence is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," or more than 50 percent.

Beyond a Reasonable Doubt is the highest amount of proof; it is required to convict a

person of a criminal charge.

Certainty means that there is not even an unreasonable doubt as to its truth.

5. **Remind students of the rule** that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement.

Tell students there are many exceptions to the search warrant requirement in Washington. Brainstorm a quick list without expanding on the exceptions: incident to a lawful arrest, emergency searches, plain view, consent searches, appropriate investigative stop and frisk for weapons, exigent circumstances with probable cause to search, incident to hot pursuit of fleeing felon, vehicles, proper inventory searches, and schools.

6. Tell students that this class will focus on random searches of passenger vehicles seeking to board state ferries, which is not *yet* one of the exceptions. Clarify that students understand that random means that there was no information known to the officer prior to the search that illegal items might be found in that specific vehicle.
7. **Pass out Handout 1** and have students read individually. Divide the class into small groups of no more than five students. Refer to each small group as a different circuit court (e.g., First Circuit Court, Second Circuit Court, etc.). Ask the "judges" in each court to decide how they would rule in this case study and why. Give students five minutes to decide (increase time if students are not finished in five minutes). Tell students to elect a chief judge to report their decision and reasons to the class. Ask students if they understand the assignment.
8. **Debrief the class** by having each circuit court give its ruling without giving reasons at first. Write their responses on the board using this chart:

	Law Enforcement Can Search	Ferry Passengers Have Right to be Free from Random Vehicle Searches
First Circuit	X	
Second Circuit		X
Etc.		

9. **Refer to the chart** and ask one of the circuits that ruled that the random search was constitutional to give **only one** reason why the search was constitutional. Then, ask a circuit that ruled the passenger's rights were violated by the search to give **one reason** why. Make sure that each circuit has a chance to provide at least one reason why it ruled as it did.

In the unlikely event that all students vote the same way, ask students to think like lawyers and provide the arguments to support the other view. Allow up to 15 minutes

for group responses and discussion.

Students' viewpoints in favor of the searches may include that the risk of harm is at least equal to the problems at airports where these type searches are legal; the intrusion is minimal; and other arguments.

Viewpoints against the searches may include issues such as how long the state of crisis will last, since terrorism is an on-going problem; democracy is risky; the terrorists win if citizens give up their privacy rights; the constitution has only limited exceptions to the warrant requirement and should not allow for expansions; and other arguments.

10. **Let students know** that on June 21, 2002, because of costs and after drawing complaints from commuters and criticism from lawmakers and civil libertarians, the Washington State Patrol agreed to end the random searches of passenger cars and trucks boarding state ferries. Also, the state Attorney General's Office had questioned whether the searches violated the Washington State Constitution, which provides protections against random searches.

However, on July 1, 2003, the Homeland Security Department announced new security rules that affect the whole maritime industry, including 10,000 ships and 5,000 coastal facilities. U.S. Transportation Secretary said America's ports are more vulnerable to terrorist attacks than any other part of the transportation industry. The new rules did not mandate car and passenger screening on ferries, but they do require that ferry operators come up with a new, tighter security plan that could include such screenings.

In March 2005, the Governor created the Vessel and Terminal Security (VATS), a new division within the Washington State Patrol, to increase coordination and security efforts for the state's ferries system. Under normal security conditions, officers with explosive-sniffing dogs patrol the lines of vehicles and foot passengers before boarding. If the dogs hit on something, they'll do a further search of the passenger and the vehicle. If the security level were raised to a higher state of alert, this could change.

11. **Review the standard** for random ferry searches (no information) and compare it to random searches at the airports (no information). Should the fact that random airline searches are permitted justify random vehicle searches of boarding ferry passengers?
12. **Conclude with a comment** on the tension between efficient police work and privacy of the individual. The teacher may follow up on this lesson by teaching additional exceptions to the search warrant requirement from the *Washington Supplement to Street Law*.

HANDOUT 1

Ferry Searches During Times of Crisis Case Study

The ferry system is one of the major people-movers in the Puget Sound. The Washington State Ferries operate a fleet of 25 vessels carrying 26 million passengers a year to 20 ports of call, from Tacoma to Sidney, British Columbia. Thousands of workers commute daily to Seattle from places such as Bremerton, Bainbridge Island, and Vashon Island.

In the aftermath of 9-11, motorists who ride ferries across Puget Sound were presented with a choice in order to make in their commute: submit to vehicle searches or risk missing the boat.

Washington State troopers began randomly inspecting cars and trucks as they line up on docks around Seattle for ferry rides. "It's not a huge hassle because our customers are already waiting in line anyway," said a spokeswoman for Washington State Ferries. "So far, people have been very obliging. They understand that this is just the tenor of the times."

Each day, police choose a different ferry dock on Puget Sound – there are 20 of them – to stage the random searches.

During these searches, only three motorists have balked at the request, and two of them changed their minds once they heard they could be banned from coming aboard a ferry unless they let officers look inside their vehicles. The third motorist who protested demanded his money back and drove away.

The state patrol claims the searches were voluntary; although, motorists who did not consent to the searches were prevented from boarding the boat. Civil liberties groups complained that these random searches violated the state and federal constitution.

1. Is a random search of the cars and trucks boarding Washington State Ferries during times of crisis an unconstitutional search? Why or why not?
2. Should random vehicle searches be included as part of the security measures on Washington State Ferries?